

Collection FAQ

Q: Does NPS fund labeling and cataloging for NPS specimens that non-NPS projects generate?

A: There is no requirement that Parks fund labeling and cataloging for NPS specimens that non-NPS projects generate. Parks always have the option to fund labeling and cataloging for NPS specimens that non-NPS projects generate, when a compelling public benefit would be derived and subject to availability of funds. Requiring the NPS to routinely fund these costs would strain limited park resources and could potentially result in the unfortunate unintended consequence of denial of permits because of the NPS's inability to meet the proposed requirement that the NPS always fund the labeling and cataloging costs. Unless otherwise stated in a permit, the permit's General Conditions require permittees to accomplish this work within the scopes and budgets of their projects.

Q: Why does the NPS decline to convey ownership of biological specimens collected on National park system lands to museums or other entities that serve as repositories for NPS collections?

A: NPS biological specimens have ongoing and increasing public benefit and value for park resource management, science, and education. The NPS has authority to control, possess, and manage these collections, which are federal property. As long as these collections conform to NPS mission and policy, we have no desire or authority to convey them to other entities. While we do not convey specimens, we do encourage their use, including through long-term repository loans.

Q: What is the legal basis for NPS declining to convey ownership of specimens collected on National park system lands to museums or other entities that serve as repositories for NPS collections?

A: As a general matter, government property is strictly governed under the Federal Property and Administration Services Act of 1949, 40 U.S.C. 471 et seq. (2001). The Federal Property Management Regulations set forth specific parameters and procedures for the use, sale, and disposal of both real and personal public property held by the federal government. 41 C.F.R. Ch. 102. National park system lands and natural resources are not directly governed by the Federal Property and Administrative Services Act. Instead, the NPS Organic Act, 16 U.S.C. 1 et seq., provides the basis for the management of national park lands and resources. In addition to the Organic Act, other statutes and regulations specific to NPS govern the use of park resources.

The Organic Act states that the use of national park units shall be in conformance with their fundamental purpose, which is "to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. 1. The Secretary of the Interior has the authority to make rules and regulations that are necessary for the use and management of the parks, provided that no natural curiosities, wonders, or objects of interest are leased, rented or granted to anyone on such terms as to interfere with free access to them by the public. 16 U.S.C. 3.

Congress and NPS have determined that certain natural and cultural specimen collections are permissible pursuant to specific statutes and regulations. Scientific natural resource activities, including specimen collection, are governed by 36 C.F.R. 2.5. A very limited number of other types of natural resource collecting is governed by 36 C.F.R. 2.1.

Specimens collected pursuant to 36 C.F.R. 2.5 are treated as NPS museum objects or collections.¹ NPS museum objects and collections are subject to the statutory provisions in 16 U.S.C 18f, and 18f2-3.² This statute defines "museum objects" and "museum collections" as "objects that are eligible to be or are made part of a museum, library, or archive collection through a formal procedure, such as accessioning. Such objects are usually movable and include but are not limited to prehistoric and historic artifacts, works of art, books, documents, photographs, and natural history specimens." 16 U.S.C 18f-3(b).

Originally enacted in 1955 to allow NPS to accept donations and loans, the statute was amended in 1996 to provide NPS with additional management tools. However, Congress did not give NPS unfettered discretion to transfer or convey museum specimens. Rather, it prescribed specific conditions and parameters for donations, exchanges, loans, transfers and conveyances. "Transfers" to qualified Federal agencies may occur when the Secretary determines that museum objects or collections are no longer needed for museum purposes. Items transferred under this authority remain in Federal ownership. "Conveyances" to private 501(c)(3) institutions and to non-Federal governmental entities may occur if the Secretary determines that the collections are no longer needed for museum purposes, and the recipient is dedicated to the preservation and interpretation of natural or cultural heritage and is

qualified to manage the property. A conveyance under 16 U.S.C. 18f-2(a)(2) would result in a change of ownership from NPS to the receiving entity.

Such conveyances are subject to the review and approval process outlined in 16 U.S.C. 18f-2(b). Under current NPS policy, deaccessioning is only accomplished on a case-by-case basis. (See NPS Museum Handbook II, Ch. 6, "Deaccessioning.")

36 C.F.R. 2.5 requires that specimens collected under this regulation, if retained in museum displays or collections, bear official NPS museum labels and their catalog numbers be registered in the NPS National Catalog. Specimens collected under 36 C.F.R. 2.5 and retained for museum collections are needed for museum purposes and future resource management decision-making. Therefore, they are not eligible for conveyance to other institutions. The strong interest of other museums in these specimens further demonstrates the importance of these specimens for museum purposes.

1 Cultural resources collected on park lands pursuant to the Archeological Resources Protection Act (ARPA) are also treated as NPS museum collections. Curation and use of such collections is governed by 36 C.F.R. Part 79.

2 Because research specimen collections are governed by this specific statute, issues involving commercial hunting, fishing and trapping are not analogous.

Q: May parks use the products of scientific research studies in their interpretation program?

A: Key points regarding such cases where NPS acquires copies of data, reports, maps, etc. as a condition of a Scientific Research and Collecting Permit. Note that in the case of Works for Hire, NPS should obtain the copyright.

1. Data and facts are not copyrightable.
2. The permittee retains copyright of all the materials created, such as maps, reports, unpublished reports.
3. Copyright infringement occurs when a copyrighted work is reproduced, distributed, performed, publicly displayed, or made into a derivative work without the permission of the copyright owner, except as such rights are limited by law, as in fair use.
4. Fair use is a legal doctrine that promotes freedom of expression by permitting the unlicensed use of copyright-protected works in certain circumstances. [Section 107 of the Copyright Act](#) provides the statutory framework for determining whether something is a fair use and identifies certain types of uses—such as criticism, comment, news reporting, teaching, scholarship, and research—as examples of activities that may qualify as fair use. Most NPS uses would probably fall under teaching (interpretation) and research. See NPS Museum Handbook, Part III, Chapter 2 Legal Issues at <https://www.nps.gov/museum/publications/MHIII/Jan07LegalIssues.pdf> for a good discussion of copyright and fair use.
5. If a park has questions about whether a proposed activity is covered by fair use, the park should consult SOL. When in doubt, the park can contact the author for permission to use the copyrighted work.
6. The park always must properly credit the author and maintain the integrity of the original work.

For more information, see the Copyright Office web site at <https://www.copyright.gov/title17/92chap1.html#107>, and <https://www.copyright.gov/>.
